



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 4, 2003

Ms. Ruth H. Soucy
Deputy General Counsel
Comptroller of Public Accounts
P.O. Box 13528
Austin, Texas 78711-3528

OR2003-8685

Dear Ms. Soucy:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 192293.

The Comptroller of Public Accounts (the "comptroller") received a request for all records related to a specified company and its predecessor, including certain correspondence. You state that the comptroller has released a portion of the requested information to the requestor. However, you claim that some of the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.¹

Initially, we note that the submitted franchise tax reports are encompassed by the previous determination issued to the comptroller in Open Records Letter No. 2003-7642 (2003). In that decision, we concluded that franchise tax reports are made confidential by 171.206 of the Tax Code and must be withheld from disclosure under section 552.101 of the Government Code.² We understand that the required elements of law, fact, and circumstances specified in the prior ruling are met in this instance. Therefore, the comptroller may withhold the submitted franchise tax reports in accordance with Open

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). Here, we do not address any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

²Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information made confidential by other statutes.

Records Letter No. 2003-7642 (2003).³ *See also* Gov't Code § 552.301(a); Open Records Decision No. 673 at 7-8 (2001) (attorney general decision constitutes second type of previous determination under Gov't Code § 552.301(a) where (1) information at issue falls within specific, clearly delineated category of information about which attorney general has previously rendered decision; (2) previous decision is applicable to particular governmental body from which information is requested; (3) previous decision concludes that specific, clearly delineated category of information is or is not excepted from disclosure; (4) elements of law, fact, and circumstances are met to support previous decision's conclusion that information at issue is or is not excepted from required disclosure; and (5) previous decision explicitly provides that governmental body to which decision applies may withhold information without necessity of again seeking attorney general decision).

In regard to the remaining submitted information, section 111.006(a)(2) of the Tax Code provides that information "secured, derived, or obtained by the comptroller or the attorney general during the course of an examination of the taxpayer's books, records, papers, officers, or employees, including an examination of the business affairs, operations, source of income, profits, losses, or expenditures of the taxpayer" is confidential. Tax Code § 111.006(a)(2). Additionally, chapter 171 of the Tax Code, which pertains to franchise tax, has a similar confidentiality provision. *See* Tax Code § 171.206. Some of the remaining submitted information consists of information that was obtained from the taxpayer in question. Therefore, we conclude that this information is confidential under sections 111.006(a)(2) and 171.206 of the Tax Code and must be withheld under section 552.101 of the Government Code.

The remaining submitted information was generated by the comptroller and not by the taxpayer. However, it contains information obtained from records filed with the comptroller or obtained during the course of an examination of the taxpayer's records, officers or employees for purposes of sections 111.006(a)(2) and 171.206. We agree that the information you have marked is confidential under these sections and must be withheld under section 552.101 of the Government Code. The comptroller must also withhold the information that identifies the taxpayer pursuant to sections 111.006 and 171.206. *See* Attorney General Opinion H-223 (1974). The remaining information must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full

³ As we are able to make this determination, we need not address your other arguments against disclosure of the franchise tax reports.

benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



W. Montgomery Meitler
Assistant Attorney General
Open Records Division

WMM/lmt

Ref: ID# 192293

Enc: Submitted documents

c: Ms. Claudia Grisales
Business Reporter
Austin American-Statesman
P.O. Box 670
Austin, Texas 78767
(w/o enclosures)